

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

RATTHAPON YAPUNA,  
SOMKHIT NASEE, WISIT  
KAMPILO, and all other similarly  
situated persons,

## Plaintiffs,

V.

GLOBAL HORIZONS  
MANPOWER INC., MORDECHAI  
ORIAN, PLATTE RIVER  
INSURANCE COMPANY,  
ACCREDITED SURETY AND  
CASUALTY COMPANY, INC.,  
VALLEY FRUIT ORCHARDS,  
LLC, and GREEN ACRE FARMS,  
INC.,

## Defendants.

NO. CV-06-3048-RHW

**ORDER DENYING  
PLAINTIFF'S MOTION FOR  
PARTIAL SUMMARY  
JUDGMENT**

Before the Court is Plaintiff's Motion for Partial Summary Judgment re:

Joint and Several Liability of Valley Fruit Orchards and Green Acres Farms (Ct. Rec. 105). The motion was heard without oral argument.

In their complaint, Plaintiffs allege that the Global Defendants<sup>1</sup> violated the Washington Farm Labor Contractor Act by making false and misleading

<sup>1</sup>Defendants Global Horizons Manpower, Inc., Mordechai Orian, Platte River Insurance Company and Accredited Surety and Casualty Company, Inc, are collectively referred to as the Global Defendants.

1 representations to Plaintiff concerning the terms and conditions of employment;  
 2 failing to provide written statements at the time of recruiting, soliciting, or hiring  
 3 Plaintiffs; failing to comply with the terms and provisions of their agreements and  
 4 contracts; and acting as a farm labor contractor without a license to do so from the  
 5 State of Washington. Plaintiffs seeks to hold the Grower Defendants<sup>2</sup> jointly and  
 6 severally liable for the Global Defendants' allegedly unlawful conduct.

7 Plaintiffs now move for partial summary judgment on the Grower  
 8 Defendants' liability.

9 **DISCUSSION**

10 **A. Standard of Review**

11 Summary judgment is appropriate if the "pleadings, depositions, answers to  
 12 interrogatories, and admissions on file, together with the affidavits, if any, show  
 13 that there is no genuine issue as to any material fact and that the moving party is  
 14 entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). There is no  
 15 genuine issue for trial unless there is sufficient evidence favoring the non-moving  
 16 party for a jury to return a verdict in that party's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). The party moving for summary judgment bears the  
 17 initial burden of identifying those portions of the pleadings, discovery, and  
 18 affidavits that demonstrate the absence of a genuine issue of fact for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). If the moving party meets its initial  
 19 burden, the non-moving party must go beyond the pleadings and "set forth specific  
 20 facts showing that there is a genuine issue for trial." *Id.* at 325; *Anderson*, 477  
 21 U.S. at 248.

22 In addition to showing that there are no questions of material fact, the  
 23 moving party must also show that it is entitled to judgment as a matter of law.

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 27 <sup>2</sup>Defendants Valley Fruit Orchards, LLC and Green Acre Farms, Inc. are  
 28 collectively referred to as the Grower Defendants.

1 *Smith v. Univ. of Washington Law School*, 233 F.3d 1188, 1193 (9<sup>th</sup> Cir. 2000).

2 The moving party is entitled to judgment as a matter of law when the non-moving  
 3 party fails to make a sufficient showing on an essential element of a claim on  
 4 which the non-moving party has the burden of proof. *Celotex*, 477 U.S. at 323.

5 When considering a motion for summary judgment, a court may neither  
 6 weigh the evidence nor assess credibility; instead, “the evidence of the non-movant  
 7 is to be believed, and all justifiable inferences are to be drawn in his favor.”

8 *Anderson*, 477 U.S. at 255. When the evidence yields conflicting inferences,  
 9 summary judgment is improper, and the action must proceed to trial. *Munger v.*  
 10 *City of Glasgow Police Dep't*, 227 F.3d 1082, 1087 (9<sup>th</sup> Cir. 2000).

11 **B. Plaintiffs' Arguments**

12 Plaintiffs make two arguments in support of their motion: (1) the Grower  
 13 Defendants' failed to engage in due diligence to determine whether Global had a  
 14 license to operate as a farm contractor in the State of Washington, thereby  
 15 subjecting themselves to joint and several liability; and (2) the doctrine of  
 16 collateral estoppel, or issue preclusion, provides for joint and several liability on  
 17 the part of the Grower Defendants.

18 Each of these arguments will be addressed in turn.

19 **1. Washington Farm Labor Contractors Act**

20 Wash. Rev. Code § 19.30.200 states:

21 Any person who knowingly uses the services of an unlicensed  
 22 farm labor contractor shall be personally, jointly, and severally liable  
 23 with the person acting as a farm labor contractor to the same extent  
 24 and in the same manner as provided in this chapter. In making  
 determinations under this section, any user may rely upon either the  
 license issued by the director to the farm labor contractor under RCW  
 19.30.030 or the director's representation that such contractor is  
 licensed as required by this chapter.

25 Wash. Admin. Code 296-310-260 states:

26 (1) A person who knowingly uses the services of an unlicensed  
 27 contractor is liable for unpaid wages, damages, and civil and criminal  
 28 penalties to the same extent as the unlicensed contractor.

(2) Pursuant to RCW 19.30.200, a person may prove lack of

knowledge by proving that she or he relied on a license issued by the department under chapter 19.30 RCW, or upon the department's representation that the contractor was licensed. The department shall not make oral representations that a contractor is or is not licensed. All representations by the department that a contractor is licensed shall be made in writing and shall be signed by the director or the employment standards supervisor or the assistant director. The department shall not accept reliance on a supposed oral representation as proof in any administrative enforcement proceeding.

Plaintiff reads these two provisions as creating an affirmative duty on the part of the user of a farm labor contractor to engage in due diligence by insisting on seeing either the license issued by the director to the farm labor contractor, or written representations by the director that the contractor is licensed under Washington law. According to Plaintiffs, the failure to do so subjects the user to joint and several liability.

The Court disagrees. Instead, the Court reads the statute and regulation together as setting forth an affirmative defense and directing the Department to not provide oral representations to inquiries regarding licensed farm labor contractors. Moreover, the Court finds that whether and when the Grower Defendants had constructive knowledge that Global lacked the required Washington FLCA license is a question of fact.

## 2. Collateral Estoppel

Plaintiffs argue that the Grower Defendants are collaterally estopped from relitigating the issue of whether they are jointly and severally liable based on the Court's ruling in a collateral proceeding, *Perez-Farias, et. al. v. Global Horizons, et al.*, CV-05-3061-RHW. In that case, Judge McDonald made the following rulings:

It is undisputed that Global operated as an unlicensed farm labor contractor in Washington State on behalf of Green Acre and Valley Fruit from January to October 6, 2004. The uncontested facts reveal that neither Mr. Morford nor Mr. Verbrugge investigated whether Global possessed a valid Washington State farm labor contractor license, and, after they were each advised that no license existed in July of 2004, they continued to use Global's services. Green Acre and Valley Fruit continued to use the services of Global between July and October of 2004.

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2 There, the Grower Defendants failed to file a response to the plaintiff's  
3 motion for summary judgment.<sup>3</sup> Moreover, Judge McDonald did not address  
4 whether there is an affirmative duty on the part of the user of a farm labor  
5 contractor to verify that the contractor has a license, nor did he address whether a  
6 user is liable for all conduct of the contractor, or only for actions that were taken  
7 while the contractor was not licensed, or during the period that the user knew that  
8 the contractor was unlicensed. Collateral estoppel does not prevent Defendants  
9 from contesting their joint and several liability.

10 Accordingly, **IT IS HEREBY ORDERED:**

11 1. Plaintiff's Motion for Partial Summary Judgment re: Joint and Several  
12 Liability of Valley Fruit Orchards and Green Acres Farms (Ct. Rec. 105) is  
13 **DENIED.**

14 **IT IS SO ORDERED.** The District Court Executive is directed to enter this  
15 Order and forward copies to counsel.

16 **DATED** this 10<sup>th</sup> day of September, 2008.

17 *S/ Robert H. Whaley*

18 ROBERT H. WHALEY  
19 Chief United States District Judge

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27 <sup>3</sup>This Court later found that good cause existed and vacated the award of  
28 statutory damages.